

IN THE SENATE

SENATE BILL NO. 1146

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO FOOD ESTABLISHMENTS; AMENDING SECTION 39-1602, IDAHO CODE, TO DEFINE ADDITIONAL TERMS; AND AMENDING SECTION 39-1607, IDAHO CODE, TO PERMIT THE DEPARTMENT OF HEALTH AND WELFARE'S DESIGNATED REGULATORY AUTHORITY TO CHARGE FOOD ESTABLISHMENTS A LICENSING FEE, TO REVISE LICENSE FEES FOR SPECIFIED FOOD ESTABLISHMENTS, TO PROVIDE TERMS AND CONDITIONS ON CERTAIN LICENSES, TO REMOVE REFERENCE TO THE FOOD SAFETY FUND AND TO PROVIDE FOR REVIEW OF THE FOOD INSPECTION PROGRAM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-1602, Idaho Code, be, and the same is hereby amended to read as follows:

39-1602. DEFINITIONS. As used in this chapter:

(1) "Commissary" means a place where food, containers or supplies are stored, prepared or packaged for transit, sale or service at other locations.

(2) "Food establishment" means those operations in the food business such as, but not limited to, food processing establishments, canning factories, salvage processing facilities, food service establishments, cold storage plants, commissaries, warehouses, food vending machine operations and location, caterers, mobile food units and retail food stores. Such operations include all activities under the control of the license holder including preparation, processing, storage, service, transportation vehicles, satellite locations, divisions and departments, and remote feeding sites. The term includes operations which are conducted in permanent, temporary or mobile facilities or locations. It includes any food operation regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. Individual divisions and departments on one (1) premises and under common ownership shall as a whole be considered a single food establishment. The term "food establishment" does not include:

- (a) Private homes where food is prepared or served for individual family consumption;
- (b) Fraternal, benevolent or nonprofit charitable organizations which do not prepare or serve food on a regular basis. Food shall not be considered to be served on a regular basis if the food is served for a period not to exceed five (5) consecutive days on no more than three (3) occasions per year for foods which are not potentially hazardous, or if the food is served no more than one (1) meal a week for all other foods;
- (c) Bed and breakfast establishments with ten (10) or fewer beds;
- (d) Establishments which offer only factory-sealed foods that are not potentially hazardous;
- (e) Agricultural markets; and

(f) Agricultural equipment used for the extraction or harvest of an agricultural product including, but not limited to, mint stills.

(3) "Intermittent food establishment" means a food vendor that operates for a period of time, not to exceed three (3) days per week, at a single, specified location in conjunction with a recurring event and that offers potentially hazardous food to the general public. Examples of a recurring event may be a farmers' or community market or a holiday market. "Intermittent food establishment" does not include the vendor of farm fresh ungraded eggs at a recurring event.

(4) "Mobile food establishment" means a food establishment selling or serving food for human consumption from any vehicle or other temporary or itinerant station and includes any movable food service establishment, truck, van, trailer, pushcart, bicycle, watercraft or other movable food service with or without wheels, including hand-carried, portable containers in or on which food or beverage is transported, stored or prepared for retail sale or given away at temporary locations.

(5) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms or the slower growth of clostridium botulinum. Included is any food of animal origin, either raw or heat treated and any food of plant origin which has been heat treated or which is raw seed sprouts; cut melons; and garlic and oil mixtures. The term "potentially hazardous food" does not include:

- (a) Air-dried hard-boiled eggs with shells intact;
- (b) Foods with a water activity (aw) value of eighty-five hundredths (0.85) or less;
- (c) Foods with a pH (hydrogen ion concentration) level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit;
- (d) Foods in unopened hermetically-sealed containers which have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
- (e) Foods for which laboratory evidence, acceptable to the regulatory authority, demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of clostridium botulinum cannot occur;
- (f) Milk, half-and-half cream, butter products, frozen dairy desserts and other fluid milk products, in the original unopened container; and
- (g) Any other food items determined by the department of health and welfare not to be potentially hazardous.

(6) "Regulatory authority" means the director of the Idaho department of health and welfare or the director's designee.

(7) "Temporary food establishment" means a food establishment that operates for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

SECTION 2. That Section 39-1607, Idaho Code, be, and the same is hereby amended to read as follows:

39-1607. LICENSE FEE. (1) A fee may be charged by the department of health and welfare's regulatory authority for licensing a food establishment. ~~The fee shall not exceed sixty five dollars (\$65.00) per establishment per year and shall be collected by the designated regulatory authority.~~

1 (a) The fee per food establishment for licenses issued from July 1, 2009, through June
 2 30, 2010, shall be:

3 (i) Sixty-five dollars (\$65.00) for temporary food establishments, intermittent
 4 food establishments and mobile food establishments without a commissary;

5 (ii) Seventy-five dollars (\$75.00) for mobile food establishments with a
 6 commissary;

7 (iii) Ninety-five dollars (\$95.00) for all other food establishments, except for food
 8 establishments with more than two (2) licenses on one (1) premises under common
 9 ownership; and

10 (iv) One hundred seven dollars and fifty cents (\$107.50) for food establishments
 11 with more than two (2) licenses on one (1) premises under common ownership.

12 (b) The fee per food establishment per year for licenses issued on and after July 1, 2010,
 13 shall be:

14 (i) Sixty-five dollars (\$65.00) for temporary food establishments, intermittent
 15 food establishments and mobile food establishments without a commissary;

16 (ii) Eighty-five dollars (\$85.00) for mobile food establishments with a
 17 commissary;

18 (iii) One hundred twenty-five dollars (\$125) for all other food establishments,
 19 except for food establishments with more than two (2) licenses on one (1)
 20 premises under common ownership; and

21 (iv) One hundred fifty dollars (\$150) for food establishments with more than two
 22 (2) licenses on one (1) premises under common ownership.

23 (2) A license issued to a temporary or intermittent food establishment by a regulatory
 24 authority shall be valid only for the celebration or event for which the license was issued;
 25 however, no additional license fee will be charged by a regulatory authority to a temporary or
 26 intermittent food establishment for other celebrations or events within the same calendar year
 27 and with the same menu.

28 (3) Fees collected for licensing a food establishment shall be used by the designated
 29 regulatory authority for funding a portion of the food safety inspection program. ~~Any funds~~
 30 ~~remaining in the food safety fund after the effective date of this act shall be paid to the~~
 31 ~~designated regulatory authority that collected the fee.~~

32 (4) On and after January 1, 2010, the regulatory authority shall review at three (3) year
 33 intervals the cost data associated with the operation of the food inspection program as well as
 34 actions taken to increase the efficiency of such program and provide a report on same to the
 35 health and welfare committees of the Idaho legislature.